S.B. CIVIL WRIT PETITION NO.1682/2004

Smt. Rukmani Devi & Ors.vs. Surendra Singh Yadav & ors.

Date : 10.5.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. N.M. Lodha, for the petitioners.
Mr. J.K. Bhaiya, for the respondents.

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Heard earned counsel for the parties.

The present writ petition has been filed by the petitioners/defendants against the order dated 27.3.2004 by which the trial court, after hearing the arguments finally in a suit for specific performance of contract, held that there is necessity of framing two issues more and framed the two issues.

The issue no.1 framed by the trial court is whether the plaintiffs incurred expenditure of Rs.5 lakhs after entering into agreement for sale of the house in question and in case, no relief for specific performance of contract can be granted, then whether the plaintiffs are entitled for decree of Rs.5 lakhs.

The second issue is whether in the facts and circumstances of this case, the plaintiff is entitled for decree of specific performance of contract ?

According to learned counsel for the petitioners, the suit was filed by the plaintiffs specifically for specific performance of the contract valuing the suit at Rs.1,98,000/- whereas the trial court has framed the issue for relief of decree of Rs.5 lakhs despite the fact that the said relief was not prayed for by the plaintiffs in their plaint nor the plaintiffs showed their willingness to claim such a relief in a suit. It is also submitted that the issue no.2 is already covered in the relief issue.

Learned counsel for the respondents/plaintiffs submitted that the trial court framed the issues of its own and for which the trial court had full jurisdiction. It is also submitted that the plaintiffs in their plaint very specifically pleaded that he incurred expenditure of Rs.5 lakhs over the property in dispute and, therefore, if the trial court found that the issue is necessary for purpose of doing justice between the parties, this Court may not interfere in writ jurisdiction.

I have considered the submissions of the learned counsel for the parties.

It is true that the trial court has ample power to frame issues even after final arguments in a civil suit. But here in this case, the question raised by the petitioners is not that the trial court had no

jurisdiction to frame issue but the question here is that whether there was any foundation for framing the issue or not which gave the trial court jurisdiction to frame the issue.

Admittedly, the plaintiffs themselves never sought a decree for Rs.5 lakhs in a suit for specific performance on the ground that they have incurred expenditure over the suit property, therefore, in case, the decree is not granted, they are entitled for the expenses which they allege that they incurred over the property. The plaintiffs also despite that, did not choose to amend the plaint during the entire trial, if they had no intention to stick upon the only relief of specific performance of contract and they had an intention to claim relief of decree of Rs.5 lakhs on account of the alleged expenditure which they could have proved by evidence in the duly instituted suit claiming such relief. Therefore, incurring of expenditure of Rs.5 lakhs was a question of fact which should have been specifically pleaded in the plaint by giving detail particulars which could have been subject matter of issue in the trial in case, the suit would have been properly valued and relief could have been sought by the plaintiffs.

Apart from it, it appears that when the plaintiff himself did not ask for such relief of framing of the issue which is pure question of fact and depends upon the plaintiffs' evidence, then there was no occasion

for the trial court to ask the plaintiffs to produce the evidence on a issue of fact which in the opinion of the Court, the relief could have been claimed by the plaintiffs.

The issue no.2 has been framed without there being any reason because in a suit for specific performance of contract, the relief issue always cover that, where the relief of specific performance of contract can be granted by the Court which is a specific provision of specific law of performance of contract.

Apart from the above, there was no reason for the trial court to frame the issue as framed for retrial of entirely new issue for which both the parties never intended to contest. The impugned order has been passed by the trial court without there being any foundation to exercise the jurisdiction for framing the issue.

In view of the above, this writ petition is allowed and the order dated 27.3.2004 passed by the rial court is set aside.

(PRAKASH TATIA), J.

S.Phophaliya